

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JEREMY LYNN VATER,)
Petitioner,)
v.)
ATTORNEY GENERAL OF THE STATE)
OF NEBRASKA,)
Respondent.)

Case No. CIV-15-874-W

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing pro se, brings this action pursuant to 28 U.S.C. § 2254 seeking a writ of habeas corpus. Pursuant to an order entered by United States District Judge Lee R. West, this matter has been referred to the undersigned magistrate judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). On August 14, 2015, Petitioner was ordered to cure various deficiencies to both his Petition and Application (Motion) for leave to proceed *in forma pauperis*. *See* (ECF No. 5). Petitioner submitted an Amended Petition on August 21, 2015 (ECF No. 6) along with a letter regarding his application to proceed *in forma pauperis* (ECF No. 6-1). To date the Petitioner has not submitted the remaining required financial information as ordered by the Court on August 14, 2015.

Having reviewed the Amended Petition and letters provided by the Petitioner, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5.00. Specifically, the Petitioner submitted a statement of institutional account, signed by an authorized prison official indicating a balance of \$191.26 as of July 6, 2015. Because he

does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion, **ECF No. 2**, be **DENIED** and that he be ordered to prepay the full \$5.00 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). *Lister v. Department of the Treasury*, 408 F.3d 1309, 1312 (10th Cir. 2005) (magistrate judge should issue a report and recommendation when denying motion to proceed *in forma pauperis*).

It is further recommended that this action be dismissed without prejudice to re-filing unless Petitioner pays the \$5.00 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Petitioner is advised that he may file an objection to this Report and Recommendation with the Clerk of this Court by **October 5, 2015**, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. Petitioner is further advised that any failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

This report and recommendation terminates the referral to the undersigned Magistrate Judge unless and until the matter is re-referred.

ENTERED on September 15, 2015.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE